

1 NATHAN D. IDE, #187510
Attorney at Law
2 110 W. Center Ave., Suite A
Post Office Box 2621
3 Visalia, CA 93279
Telephone: (559) 734-9889
4 Facsimile: (559) 734-9876

5 Attorneys for
ECCO Equipment Corporation
6
7

8 UNITED STATES DISTRICT COURT
FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
10

11 UNITED STATES, For the Use of)	
ECCO EQUIPMENT CORPORATION,)	Civil Action Files
)	No. C 07-01568 SI
12 Plaintiff,)	and No. C 07-04929 SI
13 vs.)	
)	FURTHER JOINT STATUS
14 CENTRAL VALLEY CONSTRUCTION, INC.;)	CONFERENCE STATEMENT
CKY, INC., TPA, INC., AMERICAN)	
15 CONTRACTORS INDEMNITY COMPANY, and)	Date: July 18, 2008
DOES 1-20,)	Dept: 10
)	Time: 2:30 p.m.
16 Defendants.)	
17)	
<hr/>		
18 CENTRAL VALLEY CONSTRUCTION, INC.,)	
)	
19 Cross-Claimant,)	
20 vs.)	
)	
21 TPA-CKY JOINT VENTURE,)	
)	
22 Counterdefendant.)	
23)	
<hr/>		
23 TPA-CKY JOINT VENTURE,)	
)	
24 Counterclaimant,)	
25 vs.)	
)	
26 CENTRAL VALLEY CONSTRUCTION, INC.,)	
a California corporation; PHILLIP)	
VALLEJO, an individual; GENE ARNAIZ,)	
an individual; and JOES 1 through)	

NATHAN D. IDE
ATTORNEY AT LAW
VISALIA, CA

10, inclusive,)
)
 Counterdefendants.)

AND RELATED ACTION:

UNITED STATES OF AMERICA, For the)
 Use and Benefit of RENTAL SOLUTIONS,)
 LLC,)
 Plaintiff,)
 vs.)
)
 CENTRAL VALLEY CONSTRUCTION, INC.,)
 TPA-CKY JOINT VENTURE, CKY, INC.,)
 TAN PHUNG & ASSOCIATES, AMERICAN)
 CONTRACTORS INDEMNITY COMPANY,)
 and DOES 1-20, inclusive,)
 Defendants.)

1. Jurisdiction and Service: The Court's subject matter jurisdiction over plaintiffs' claims is pursuant to the Miller Act (40 U.S.C. Sections 3131 and 3133).

All parties named by plaintiffs in both matters have been served or have appeared. All cross-defendants have been served and appeared. All Cross-Complaints have been filed against the individual defendants.

2. Facts: Plaintiff ECCO EQUIPMENT CORPORATION ("ECCO") and RENTAL SOLUTIONS ("RENTAL") provided heavy equipment to CENTRAL VALLEY CONSTRUCTION ("CVC") on a federal work of improvement. Plaintiffs contend they have not been paid for these rentals. CVC contends in both cases that its payments have not been properly credited and that some of the equipment was not used on the project.

The general contractor on the project was defendant

1 TPA-CKY JOINT VENTURE, which was a joint venture formed by
2 defendant CKY INC. and TAN PHUNG & ASSOCIATES. The TPA-CKY
3 JOINT VENTURE has sued defendant CVC for indemnity and breach of
4 contract, and CVC has sued the TPA-CKY JOINT VENTURE for breach
5 of contract. Plaintiffs ECCO and RENTAL believe these will be
6 the major issues litigated in both matters.

7 3. Legal Issues: Defendants contend that both
8 Plaintiffs' 90-day Notices under the Miller Act were defective,
9 and were not sufficient to cover all of the rentals provided.

10 4. Motions: Plaintiffs ECCO and RENTAL do not
11 anticipate filing a dispositive motion, as the parties dispute
12 certain credits. Counter-defendant PHILLIP VALLEJO anticipates
13 filing a dispositive motion regarding his individual liability.

14 5. Amendment of Pleadings: Plaintiff ECCO filed an
15 amended complaint changing the names of the joint venture
16 defendants to their proper designations. CVC has filed a cross-
17 claim against the TPA-CKY JOINT VENTURE and the TPA-CKY JOINT
18 VENTURE has filed a counter-claim naming CVC and its individual
19 owners.

20 6. Evidence Preservation: There are no evidence
21 preservation issues as all of the subject invoices are retained
22 in the normal course of business.

23 7. Disclosures: Plaintiffs ECCO and RENTAL complied
24 with their Rule 26 disclosures. Plaintiffs believe all Rule 26
25 disclosures have been made.

26 8. Discovery: Written discovery requests have been

1 exchanged, and documents have been produced by the parties in the
2 ECCO matter. Four motions to compel have been filed by the TPA-
3 CKY JOINT VENTURE against CVC and ANTHONY ARNAIZ, regarding the
4 alter ego allegations made against the individual owners of CVC.
5 The hearing on these motions is set for July 18, 2008. The
6 current Case Management Order provides for a discovery cutoff of
7 August 29, 2008 for the ECCO matter. However, new attorneys have
8 recently substituted in as counsel for Phillip Vallejo and
9 Anthony Arnaiz. As a result, the parties have only recently
10 agreed to a mediation date of August 28, 2008, which is only one
11 day before the currently scheduled discovery cutoff. The parties
12 would like to avoid the time and expense of taking numerous
13 depositions before the mediation, and to do so, request that the
14 court move back the discovery cutoff date by a period of 60 to 90
15 days.

16 9. Class Actions: This is not a class action lawsuit.

17 10. Related Cases: The Court ordered case number C-07-4929
18 MHP (SI), Rental Solutions, LLC v. Central Valley Construction,
19 et al, related.
20

21 11. Relief: Plaintiff ECCO is seeking damages in the amount
22 of \$347,535.76, which is for all rental charges and interest
23 related to the heavy equipment provided to Defendants.

24 Plaintiff RENTAL is seeking damages in the amount of
25 \$41,629.75 in its matter
26

1 Defendant TPA-CKY JOINT VENTURE has filed a counter claim
2 against CVC for approximately \$500,000.00 related to its
3 performance on the project and has named the individual owners of
4 the corporation on an alter-ego theory.

5 Defendant CVC has filed a cross claim against TPA-CKY JOINT
6 VENTURE for approximately \$900,000.00 it claims it is owed on the
7 project.

8 12. Settlement and ADR: The parties have agreed upon
9 mediation. Mediation is scheduled for August 28, 2008, with
10 Ernest C. Brown. In addition, a settlement agreement has been
11 entered into in the Rental Solutions case between RENTAL, CVC and
12 the TPA-CKY JOINT VENTURE. The TPA-CKY JOINT VENTURE has
13 performed its obligations under the agreement, in the Rental
14 Solutions case, but CVC has not performed its obligations
15 thereunder.

16 13. Consent to Magistrate Judge for All Purposes:

17 Plaintiff RENTAL did not consent to a magistrate judge in
18 its matter.
19

20 14. Other References: None.

21 15. Narrowing of Issues: The issues in this matter are
22 narrow as to ECCO and RENTAL. Plaintiffs must prove the total
23 amount of their invoices. Defendants must prove the amount of
24 their alleged credits. Defendants must also litigate their legal
25 defense of lack of proper 90-day notice.
26

1 As to the other defendants, the issues are more complex,
2 involving performance on the project by the parties, as well as
3 an accounting of monies allegedly advanced by TPA-CKY on behalf
4 of CVC. TPA-CKY is also attempting to pierce the corporate veil
5 as to the individual owners of CVC. These issues will be the
6 bulk of trial in this matter.

7 16. Scheduling:

8 The Current schedule, with proposed changes, is as follows:

9 a) Designation of Experts: Sept. 12, 2008;

10 No proposed changes.

11 b) Counter Designation of Experts: Sept. 26, 2008;

12 No proposed changes.

13 c) Discovery cutoff: August 29, 2008 (other than
14 designation of experts);

15 No proposed changes.

16 d) Pretrial Disclosures: 30 days before trial.

17 e) Hearing of dispositive motions: September 26, 2008.

18 f) Pretrial conference and trial: Trial is scheduled
19 for November 10, 2008. The pretrial conference is October 28,
20 2008.

21 As indicated in Paragraph 8 above, the introduction of
22 new counsel for Phillip Vallejo and Anthony Arnaiz, and the
23 scheduling of the mediation of these cases on August 28, 2008
24 suggest that a 60 to 90 day continuance of the discovery cutoff
25
26

1 date and the other dates associated therewith would be prudent,
2 including the trial date, so that the parties can engage in
3 meaningful settlement negotiations without having to incur the
4 time and expense of completing all non-expert discovery prior to
5 the scheduled date of the mediation.

6 17. Trial: The case is set for a Jury trial.
7 Plaintiff ECCO believes its case should take two days. RENTAL
8 believes its case will take two days. Defendants' claims should
9 take significantly longer, and trial is currently set for 5 days
10 total.

11
12 Dated: July __, 2008

/s/

Nathan D. Ide,
Attorney for Use Plaintiff
ECCO EQUIPMENT CORPORATION

13
14
15
16 Dated: July __, 2008

GANZER & WILLIAMS

17
18 By: /s/

James E. Ganzer,
Attorneys for Defendant
CENTRAL VALLEY CONSTRUCTION,
INC.

19
20
21
22 MUSICK, PEELER & GARRETT LLP

23 Dated: July __, 2008

By: /s/

24 Jack W. Fleming,
25 Attorney for Defendants,
26 CKY, INC., TPA-CKY JOINT
VENTURE, AMERICAN CONTRACTORS
INDEMNITY COMPANY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated: July __, 2008

/s/_____
Jennifer K. Whipple,
Attorney for Defendant,
PHILLIP VALLEJO

Dated: July __, 2008

Michael F. Babitzke
Attorney for Defendant,
TONY ARNAIZ

Dated: July __, 2008

/s/_____
Stan D. Blyth, Esq.
Attorneys for Plaintiff
RENTAL SOLUTIONS